

Stephen Montoya (#011791)
stephen@montoyalawgroup.com
Montoya, Jimenez, Lucero & Pastor, P.A.
3200 North Central Avenue, Suite 2550
Phoenix, Arizona 85012
602-256-6718 (telephone)
602-256-6667 (fax)

Attorney for Plaintiffs

Jeffrey S. Leonard (SBN 003809)
Jeffrey.Leonard@SacksTierney.com
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693
Telephone: 480.425.2600

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Austin and Logan Flake, husband and wife,

Plaintiffs,

v.

Joseph Michael Arpaio; et al.,

Defendants.

No. CV-15-01132-PHX-NVW

**JOINT STATEMENT OF
DISCOVERY DISPUTE
CONCERNING USE AND
DISTRIBUTION OF DEPOSITION
TESTIMONY**

The parties submit the following joint statement of a discovery dispute concerning the use and distribution of deposition testimony. Counsel certify that they have attempted to resolve the matter through personal consultation (by telephone) and sincere effort as required by LRCiv 7.2(j) and have reached an impasse.

Defendants' Position. Each side has several depositions scheduled. Defendant Arpaio's deposition was originally noticed by plaintiffs on June 20, for a deposition on July 14. On July 11, plaintiffs served an amended notice of defendant Arpaio's July 14 deposition, stating that the deposition would be recorded on video. Substantial press and social media coverage immediately followed. Defendants' counsel requested an agreement

1 that the deposition (and this would be true of all the depositions) be used only for the
 2 purposes of this litigation or otherwise in compliance with the rules of civil procedure, but
 3 not for other non-litigation purposes, such as release to the press. The request has been
 4 refused.¹

5 Plaintiffs' Position. “It is well-established that the fruits of pretrial discovery are, in
 6 the absence of a court order to the contrary, presumptively public.” San Jose Mercury
 7 News v. U.S. Dist. Ct., 187 F.3d 1096, 1103 (9th Cir. 1999). This “presumption in favor of
 8 freedom of dissemination” is recognized under Fed. R. Civ. P. 26. Humboldt Baykeeper v.
 9 Union Pac. R.R., 244 F.R.D. 560, 563 (N.D. Cal. 2007). “Placed by the law on the scales
 10 before the trial court begins any ‘balancing,’ this presumption pre-weights the scales
 11 against restricting a party’s lawful use or dissemination of discovered information.” Id.

12 The Ninth Circuit’s decision in Foltz v. State Farm, 331 F.3d 1122, 1130-1130 (9th Cir.
 13 2003), is instructive. In that case, the Court held that that to satisfy the “good cause”
 14 showing for entry of a protective order under Fed. R. Civ. P. 26(c) for the sealing of a
 15 particular record, the moving party must make “specific demonstrations of fact, supported
 16 where possible by affidavits and concrete examples, rather than broad, conclusory
 17 allegations of potential harm.” Id. “If a court finds particularized harm will result from
 18 disclosure of information to the public, then it balances the public and private interests to
 19 decide whether a protective order is necessary.” Phillips v. General Motors, 307 F.3d 1206,
 20 1211 (9th Cir. 2002). See also In re Roman Catholic Archbishop, 661 F.3d 417, 425 n.5
 21 (9th Cir. 2011) (in evaluating whether a party has shown good cause for a protective order,
 22 courts consider “whether a party benefitting from the order of confidentiality is a public
 23 entity or official,” and “whether the case involves issues important to the public”). In this
 24 case, Defendants have not identified any “particularized harm” supported by evidence that
 25 would result from the disclosure of the depositions. Moreover, even if Defendants could
 26

27 ¹ Defendants have attempted to limit their portion of this statement to an explanation of the
 28 parties' disagreement, so as to meet the Court's one-page standard, rather than to argue their
 position. Defendants believe that plaintiffs' authorities are inapposite.

1 identify some non-speculative, particularized harm, it would be outweighed by the
2 substantial public interest in this case.

3 DATED this 13th day of July, 2016.

4 **SACKS TIERNEY P.A.**

5 s/ Jeffrey S. Leonard
6 Jeffrey S. Leonard
7 4250 North Drinkwater Blvd., 4th Floor
8 Scottsdale, Arizona 85251
9 Attorneys for Defendants

10 **MONTOYA, JIMENEZ, LUCERO &**
11 **PASTOR, P.A.**

12 s/ Stephen Montoya
13 Stephen Montoya
14 3200 North Central Avenue, Suite 2550
15 Phoenix, Arizona 85012
16 Attorney for Plaintiffs
17
18
19
20
21
22
23
24
25
26
27
28

SACKS TIERNEY P.A., ATTORNEYS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2016, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Stephen Montoya
MONTOKA, JIMENEZ, LUCERO & PASTOR, P.A.
The Great American Tower
3200 North Central Avenue, Suite 2550
Phoenix, AZ 85012

Richard Trujillo
RADER, SHELDON & STOUTNER, PLLC
11260 North Tatum Blvd., Ste. 143D
Phoenix, AZ 85028
Attorneys for Plaintiffs

s/ Frances Fulwiler